

## **REMARKS**

1. In response to the final Office Action mailed February 26, 2007, Applicants respectfully request reconsideration. Claims 1-20 were originally presented for examination. Claims 1-20 were rejected in the outstanding Office Action. No Claims have been canceled or added. Claim 20 has been amended. Thus, upon entry of this paper, claims 1-20 will remain pending in this application. Of these twenty (20) claims, three (3) claims (claims 1, 15 and 20) are independent. Based on the above Amendments and following Remarks, Applicant respectfully requests that the outstanding objections and rejections be reconsidered, and that they be withdrawn.

### ***Art of Record***

2. Applicants thank the Examiner for returning form PTO/SB/08a filed by Applicant on November 28, 2006 which have been initialed by the Examiner indicating consideration of the references cited therein.

### ***Claim Objections***

1. Claim 20 has been objected to because of informalities. Applicants have amended claim 20 to overcome these objections. Applicants respectfully request that these objections be withdrawn.

### ***Claim Rejections under 35 U.S.C. §101***

2. Independent claim 20 has been rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. In rejecting the claim, the Examiner asserted that the claim fails the Practical Application Test because it allegedly fails to disclose specific methods steps taken in order to convey that data is being transformed. (*See*, Office Action at 10.) Applicants have amended the claims so that they recite specific steps as requested by the Examiner. Applicants accordingly respectfully request that the Examiner reconsider and withdraw the rejection to claim 20 under 35 U.S.C. §101.

***Claim Rejections under 35 U.S.C. §102***

3. Independent claim 1 and dependent claims 2-12 have been rejected under 35 U.S.C. § 102(e) as clearly anticipated by U.S. Patent Publication 2003/0195959 A1 to Labadie (hereinafter, "Labadie"). Dependent claims 13-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication 2003/0195959 A1 to Labadie (hereinafter, "Labadie,") and further in view of U.S. Patent No. 7,003,565 to Hind (hereinafter, "Hind"). Independent claim 20 has been rejected under 35 U.S.C. § 102(e) as clearly anticipated by U.S. Patent Publication 2004/0220947 A1 to Aman (hereinafter, "Aman"). Based upon the above Amendments and following Remarks, Applicants respectfully request reconsideration and withdrawal of these rejections.

4. Independent claim 1, recites, in part, "for each of selected ones of said transactions, instrumenting said transaction at run-time without modifying its source code to obtain a performance metric corresponding thereto...." In rejecting claim 1, the Examiner asserted that Labadie discloses this limitation. Applicants respectfully disagree with the Examiner for at least the below discussed reasons.

5. In rejecting claim 1, the Examiner asserted that the claim does not provide sufficient details as to what instrumenting amounts to in terms of steps taken to implement what is claimed as a metric obtaining function. (*See*, Office Action at 11.) The Examiner further asserted that the Examiner was construing instrumentation as a method of implementing instructions, invocations, or active modules within the execution path of a program or a running entity in order to collect performance or event related data or metrics for some subsequent analysis. (*See*, Office Action at 11.) Applicant respectfully disagrees with the Examiner's construction of the term "instrumenting" as not consistent with ordinary meaning of the term "instrumenting," nor is it consistent with Applicants' specification.

6. The term instrumenting is term of art, known to those of skill in the art. Particularly, "instrumentation" is defined as "devices or instructions installed or inserted into hardware or software to monitor the operation of a system or component." (*See*, IEEE 100, The Authoritative Dictionary of IEEE Standard Terms, Seventh Edition, 7<sup>th</sup> ed., at 564, attached hereto.) As such, contrary to the Examiner's assertion, instrumenting a transaction cannot be construed to mean "implementing instructions, invocations, or active

modules within the execution path of the transaction or a running entity in order to collect performance or event related data or metrics for some subsequent analysis,” as asserted by the Examiner. Rather, in accordance with its ordinary meaning and consistent with Applicants’ specification instrumenting a transaction means inserting software into the transaction for monitoring including, for example, to obtain a performance metric.

7. With regard to the Examiner’s reliance on Labadie, as Applicants previously noted, Labadie is directed to a framework for managing data that provides correlation information in a distributed computing system. (*See*, Labadie at Abstract.) FIGs. 4A-4C of Labadie illustrate event occurrence time lines and counter assignments to the events of various process/thread/provider scenarios. (*See*, Labadie at para 23.) More particularly, FIG. 4A of Labadie illustrates an event line for each of two threads of a process instrumented by a single provider. (*See*, Labadie at para 55.) As such, these Figures do not disclose instrumenting a transaction at run-time. Rather, Labadie discloses that these threads are already instrumented prior to the events illustrated by FIG. 4A. As such, Labadie does not teach or suggest instrumenting a transaction at run-time without modifying its source code.

8. As such, Applicants respectfully request that the Examiner reconsider and withdraw the rejection to claim 1 for at least the reason that Labadie fails to teach or suggest “for each of selected ones of said transactions, instrumenting said transaction at run-time without modifying its source code to obtain a performance metric corresponding thereto...” as recited by claim 1. Applicants therefore respectfully request that the rejection to claim 1 be withdrawn.

9. Independent claim 15 recites, in part, “instrumenting each of said transactions at run-time by modifying its respective bytecode representation to obtain a selected performance metric corresponding thereto.” In rejecting claim 15, the Examiner relied on paragraphs 36-44, 49, 53, and FIGs. 3, 5, and 6 of Labadie for allegedly disclosing this limitation. Particularly, the Examiner appears to be asserting that a SOAP parameter class 15, a process identifier (jvmID) of the SOAP parameter class 15, and a ToString method allegedly disclose this limitation of claim 15. Applicants note that the SOAP parameter class 15 of Labadie is disclosed as optional extensible context data (*See*, Office Action at para 36); jvmID is disclosed as context data stored by the SOAP parameter class 15 that uniquely identifies a particular java virtual machine (JVM) on a particular machine (*See*, Office Action at para. 38); and, the ToString method is disclosed as a method for

converting correlator information to a single string data type. (*See*, Office Action at para. 53.)

10. Thus, it appears that the Examiner is relying on the Examiner's erroneous definition of the term "instrumenting" in asserting that Labadie discloses the limitation of claim 15 reciting "instrumenting each of said transactions at run-time...." Accordingly, Applicants respectfully assert that for at least similar reasons to those discussed with regard to claim 1, Labadie does not teach or suggest "instrumenting each of said transactions at run-time by modifying its respective bytecode representation to obtain a selected performance metric corresponding thereto," as recited by claim 15. Bansal does not cure, nor has the Examiner alleged that it cures, the above-noted defect of Labadie. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claim 15 for at least these reasons.

11. Independent claim 20 recites, in part, "instrumenting at run-time a hierarchical chain of parent-child transactions ... without modifying source codes associated with these transactions...." In rejecting claim 20, the Examiner alleged that Aman discloses this limitation and relied on the above-discussed erroneous definition of the term "instrumenting." Particularly, in rejecting claim 20, the Examiner asserted that Aman discloses this limitation of claim 20 because Aman discloses invoking dynamic library APIs to collect performance data regarding transaction. (*See*, Office Action at 14.) However, for at least the reasons discussed above, the Examiner's construction of the term "instrumenting" is not consistent with its ordinary usage nor Applicants's specification. Accordingly, invoking dynamic library APIs cannot disclose instrumenting a transaction.

12. Applicants, therefore, respectfully submit that Aman fails to teach or suggest "instrumenting at run-time a hierarchical chain of parent-child transactions ... without modifying source codes associated with these transactions....," as recited by independent claim 20. Applicants accordingly respectfully request that the Examiner reconsider and withdraw the rejection to claim 20 for at least this reason.

### ***Dependent Claims***

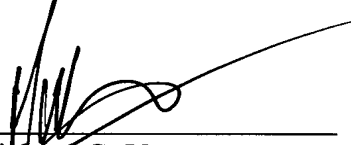
13. The dependent claims incorporate all of the subject matter of their respective independent claims and add additional subject matter which makes them *a fortiori* independently patentable over the art of record. Accordingly, Applicants respectfully

request that the outstanding rejections of the dependent claims be reconsidered and withdrawn.

***Conclusion***

14. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

Respectfully submitted,

  
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